The first EU social partner agreement in practice: parental leave in the 15 member states

Treib, Oliver; Falkner, Gerda

Veröffentlichungsversion / Published Version
Forschungsbericht / research report

96

Reihe Politikwissenschaft

Political Science Series

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April 2004

Institut für Höhere Studien (IHS), Wien
Institute for Advanced Studies, Vienna

Contact:

Gerda Falkner
☎: +43/1/599 91-175
email: falkner@ihs.ac.at

Oliver Treib
☎: +43/1/599 91-169
email: treib@ihs.ac.at

Founded in 1963 by two prominent Austrians living in exile – the sociologist Paul F. Lazarsfeld and the economist Oskar Morgenstern – with the financial support from the Ford Foundation, the Austrian Federal Ministry of Education, and the City of Vienna, the Institute for Advanced Studies (IHS) is the first institution for postgraduate education and research in economics and the social sciences in Austria. The **Political Science Series** presents research done at the Department of Political Science and aims to share "work in progress" before formal publication. It includes papers by the Department's teaching and research staff, visiting professors, graduate students, visiting fellows, and invited participants in seminars, workshops, and conferences. As usual, authors bear full responsibility for the content of their contributions.

Das Institut für Höhere Studien (IHS) wurde im Jahr 1963 von zwei prominenten Exilösterreichern – dem Soziologen Paul F. Lazarsfeld und dem Ökonomen Oskar Morgenstern – mit Hilfe der Ford-Stiftung, des Österreichischen Bundesministeriums für Unterricht und der Stadt Wien gegründet und ist somit die erste nachuniversitäre Lehr- und Forschungsstätte für die Sozial- und Wirtschafts-wissenschaften in Österreich. Die **Reihe Politikwissenschaft** bietet Einblick in die Forschungsarbeit der Abteilung für Politikwissenschaft und verfolgt das Ziel, abteilungsinterne Diskussionsbeiträge einer breiteren fachinternen Öffentlichkeit zugänglich zu machen. Die inhaltliche Verantwortung für die veröffentlichten Beiträge liegt bei den Autoren und Autorinnen. Gastbeiträge werden als solche gekennzeichnet.

Abstract

In this paper, we analyse the impact of one specific EU social policy measure, the Parental Leave Directive. This Directive is based on the first Euro-collective agreement, concluded in November 1995 by the ETUC, UNICE and CEEP. Contrary to the rather sceptical assessments presented by many observers at the time of its adoption, our in-depth analysis of the Directive's implementation in all 15 member states reveals rather far-reaching effects. The Directive induced significant policy reforms in the majority of member states and thus facilitated the reconciliation of work and family life for many working parents. These effects were not only brought about by compliance with the compulsory minimum standards of the Directive, but also by a considerable number of voluntary reforms. We argue that domestic party politics and processes of policy learning may explain the occurrence of these "unforced" changes, which have hitherto received little attention by Europeanisation scholars.

Zusammenfassung

Dieser Beitrag untersucht die Auswirkungen der EU-Elternurlaubs-Richtlinie in den Mitgliedstaaten. Diese Richtlinie basiert auf dem ersten europäischen Sozialpartner-Abkommen, das im November 1995 zwischen EGB, UNICE und CEEP abgeschlossen wurde. Im Gegensatz zu den skeptischen Einschätzungen vieler Kommentatoren zeigt unsere detaillierte empirische Analyse der Umsetzung in allen 15 Mitgliedstaaten, dass die Richtlinie durchaus weitreichende Veränderungen auf der nationalen Ebene hervorbrachte. Sie führte zu signifikanten Reformen in der Mehrzahl der Mitgliedstaaten und erleichterte es auf diese Weise vielen Eltern, Familie und Berufsleben in Einklang zu bringen. Dieser Befund ist nicht nur auf die verbindlichen Mindeststandards der Richtlinie zurückführen, sondern auch auf eine erhebliche Anzahl von freiwilligen Reformschritten der Mitgliedstaaten. Wir zeigen, dass diese bislang von der Europäisierungsforschung wenig beachteten freiwilligen Anpassungen zum Teil durch nationale Parteipolitik und zum Teil durch Lernprozesse zu erklären sind.

Keywords

European Union, social policy, social dialogue, Parental Leave Directive, Europeanisation, soft law

Schlagwörter

Europäische Union, Sozialpolitik, Sozialer Dialog, Elternurlaubs-Richtlinie, Europäisierung, Soft law

General note on content

The opinions expressed in this paper are those of the author and not necessarily those of the IHS Department of Political Science

Contents

1. Introduction

In November 1995 for the first time, the main European-level management and labour organisations, the ETUC, UNICE and CEEP, [1] concluded a collective agreement at European level, relating to parental leave and leave for urgent family reasons. In this paper, we aim to assess the policy effect of this EU-level agreement in the member states. What was the "value added" given existing domestic policies on parental leave? By the time of its adoption, many observers assessed the (potential) policy impact of the agreement and the ensuing Directive rather sceptically. It was argued that the agreed minimum standards were fairly low and that the Directive thus would not have a significant impact at the national level.[2] Specialist journals such as the European Industrial Relations Review (EIRR) highlighted above all that the length of parental leave laid down in the Directive (three months) represented the shortest leave period available in any of the countries with a statutory right to parental leave, i.e. in Greece (EIRR 262: 15). In other words, one had the impression that policy changes would only be required in a very small number of countries and that these changes would have only a limited impact.

Our results challenge these gloomy initial assessments, which were presented with very good reasons, albeit before the member states had begun to incorporate the Directive into domestic law. It is our contention that an in-depth study on the actual implementation of this (and any other) Directive in all 15 member states is necessary to obtain a realistic picture of its actual policy impact. Only today are we in a position to offer such a profound empirical overview. We can draw on the results of a collaborative project carried out at the Max Planck Institute for the Study of Societies entitled *"New Governance and Social Europe: Theory and Practice of Minimum Harmonisation and Soft Law in the European Multilevel System"* (http://www.mpi-fg-koeln.mpg.de/socialeurope). [3] This project studied the implementation of the main EU Directives of the 1990s concerning labour law (on the subjects of written employment contracts, working time, protection of young workers, protection of pregnant workers, part-time work, and also on parental leave) from a comparative perspective in all 15 EU member states.

In theoretical terms, our paper follows the analytical perspective of the growing literature on "Europeanisation" which seeks to illuminate the effects of European policy-making and

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1 The European Trade Union Confederation, the Union of Industrial and Employers' Confederations of Europe, and the European Centre of Enterprises with Public Participation.

2 See, for example, Keller/Sörries (1997), Streeck (1998).

3 Parts of the empirical data presented in this paper were gathered by our two collaborators Simone Leiber and Miriam Hartlapp. For further details on Germany, the Netherlands, Ireland and the UK see the forthcoming dissertation by Oliver Treib (2004), on Greece, Spain, Portugal, France, and Belgium the forthcoming dissertation by Miriam Hartlapp (2004), and on Denmark, Sweden, Finland, Austria, Luxembourg and Italy see the forthcoming dissertation by Simone Leiber (2004). For a comprehensive comparison across all 15 countries and all six Directives studied, see our forthcoming book (Falkner et al. 2004).

institution-building on political programmes, structures, and processes at the domestic level (see e.g. Börzel/Risse 2000; Falkner 2000; Green Cowles et al. 2001; Goetz/Hix 2001; Héritier 2001b; Knill 2001; Schmidt 2002; Börzel 2002). Our focus here clearly lies on policy effects. But how do we conceptualise them? Large parts of the Europeanisation literature have hitherto focused heavily on the "goodness of fit" between European demands and national traditions. According to this view, a significant "misfit" is a necessary condition for domestic change, while several "mediating factors", such as supportive (or opposing) domestic actor constellations, then determine the actual outcome (in particular, see Börzel/Risse 2000; Risse et al. 2001).

We partly share this view and argue that the compulsory reform requirements of the Parental Leave Directive, backed up by the legal force of European law, indeed account for an important part of the national reforms triggered by the Directive. In our view, however, this only tells part of the story. First, we observed quite a number of cases where domestic governments voluntarily exceeded the minimum standards of the Directive, e.g. by creating schemes that offer longer leave periods than required. Second, the Directive also contained a number of non-binding soft-law provisions, and our empirical analysis reveals that a number of governments also took on board some of these recommendations. The most far-reaching changes, therefore, were brought about in countries where the Directive both demanded significant adaptations and triggered additional domestic reform initiatives that reinforced its policy thrust, i.e. by a combination of obligatory and voluntary reforms. In sum, our comparative empirical case studies suggest that the impact of the Directive was much larger than initially expected.

The paper is structured as follows. In the next section, we will briefly sketch the process that led to the adoption of the Parental Leave Directive at the European level and provide an overview of its provisions (2). Then, we will turn to the compulsory part of the observed adaptations, that is, the effects brought about by compliance with the binding standards of the Directive (3). Next, we will look at the surprisingly numerous voluntary reforms enacted by domestic governments as a reaction to the Directive (4). After having summed up the overall impact of the Directive (5), we will conclude by discussing the lessons to be drawn from our findings with a view to both Europeanisation research and the transformation of the welfare state to cover new social risks (6).

2. The Directive's Content

The first Commission proposal for a Directive on parental leave and leave for family reasons dates back as early as 1983 (COM [83] 686 final). As a result of opposition by the UK and a number of other member states, however, unanimous agreement on the draft was impossible. Surprisingly, it was the Belgian Council presidency that brought the Directive back on the agenda in 1993. However, fruitless negotiations continued until autumn 1994. Despite consensus among eleven delegations in the last relevant Council debate on 22 September 1994, adoption of the proposal was still not possible due to a British veto (for details on the negotiations, see e.g. Falkner 1998).

This was the ideal situation for an application of the Maastricht Social Agreement, which by then had already been in force for almost a year. It excluded the UK from the social policy measures adopted by the other (then) eleven member states and allowed for the adoption of Euro-collective agreements between the major interest groups of employers and trade unions that could be transformed into binding Community law by the Council of Ministers (for details on the Social Agreement, see Falkner 1998). Hence, consultation of labour and management on the issue of "reconciliation of professional and family life" was instigated by the Commission on 22 February 1995. The three major cross-sectoral federations UNICE, CEEP, and ETUC were keen to show that the Euro-corporatist procedures of the Maastricht Treaty could actually be put into practice. The collective negotiations were successfully concluded long before the five-month deadline, on 6 November 1995 (Agence Europe 8 November 1995: 15). With a view to implementation, the ETUC, UNICE, and CEEP requested that the Commission submit their framework agreement to the Council for a decision that would make the requirements binding in all the member states of the Union with the exception of the UK. The Council Directive was indeed adopted on June 3, 1996.[4]

The *general aim* of the framework agreement (and hence the Directive) is, according to the preamble preceding the main text, "to set out minimum requirements on parental leave and time off from work on grounds of force majeure, as an important means of reconciling work and family life and promoting equal opportunities and treatment between men and women." The purpose of the agreement is therefore to enable working parents to take a certain amount of time off from work to take care of their children. In this context, particular

4 Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC, Official Journal L 145, 19/06/1996, pp. 4-9. Since the Conservative British government had secured an opt-out from the European Treaty's social chapter at the Maastricht summit, the UK was initially not covered by the Directive. Tony Blair's Labour government, which had assumed power in May 1997, signed up to the social chapter and declared its willingness to implement the Directives that had been enacted during the UK's opt-out (EIRR, 282: 2; EIRR 284: 2). As a consequence, the UK also had to implement the Directive, the only difference being that its transposition deadline was later than the one applying to the other member states.

emphasis is put on enabling and encouraging men to take on a greater share of childcare responsibilities.

The *compulsory minimum standards* of the Directive thus encompass seven provisions: (1) workers must be granted the right to at least three months parental leave; (2) this entitlement is to be an individual right of both male and female workers; (3) parental leave not only has to be provided for parents with children by birth, but also to those who have adopted a child; (4) workers may not be dismissed on the grounds of exercising their right to parental leave; (5) after the leave, workers must be able to return to the same, or, if that is not possible, to an equivalent or similar job; (6) rights acquired by workers before the beginning of parental leave are to be maintained as they stand until the end of the leave period and have to apply again thereafter; and, finally, (7) workers have to be granted the right to force majeure leave, i.e. a certain amount of time off from work for unforeseeable reasons arising from a family[5] emergency making their immediate presence indispensable.

These binding provisions notwithstanding, establishing the access conditions and modalities for applying the right to parental leave and leave for urgent family reasons is left to the national governments and social partners. Hence, the Directive includes a number of *exemptions and derogations* from the above-mentioned standards. First, the entitlement to parental leave may be made subject to workers having completed a certain period of work or length of service, which, however, may not exceed one year. Furthermore, a worker planning to take parental leave may be required to notify his or her employer of the dates at which the period of leave is to start and finish. It is up to the member states to decide upon the length of the notice period. Moreover, employers may be allowed to postpone the granting of parental leave for "justifiable reasons related to the operation of the undertaking" (Clause 2.3.d of the framework agreement). In addition, member states can establish special parental-leave arrangements for small undertakings. Finally, the conditions of access and detailed rules for applying parental leave may be adjusted to the special circumstances of adoption.

Further to these binding standards and derogation possibilities, the Directive contains no less than nine *non-binding soft law provisions*. Hence, the Directive recommends (1) that the entitlement to parental leave should not be transferable between the parents, thereby increasing the incentives for men to take the leave; (2) that workers should continue to be entitled to social security benefits during parental leave, (3) in particular to health care benefits; (4) that parents ought to be able to take parental leave until the child has reached the age of eight; (5) that parental leave should not only be granted on a full-time basis, but

5 The Directive does not define the term "family". This is explicitly left to the member states (Ministerrat 1996). It is crucial to note, however, that by using this term, force majeure leave cannot be restricted solely to sickness or accidents of children, but must at least cover unforeseeable emergencies of spouses, too (for a similar interpretation, see Schmidt 1997: 122).

also part-time, (6) in a piecemeal way, (7) or in the form of a time-credit system; (8) that men should be particularly encouraged to take parental leave in order to assume an equal share of family responsibilities, e.g. by measures such as awareness programmes; and (9) that the social partners at the national level ought to play a special role in the implementation and application of the European framework agreement.

The large amount of non-binding recommendations, relating to important features of the envisaged leave schemes, such as social security coverage during parental leave, flexible forms of making use of the leave, or the time up to which the leave can be taken, seems to be due to the fact that trade unions and employers in the collective negotiations at the European level could not agree on definite standards on these issues. Hence, they chose devolution to the national implementation stage as a compromise strategy.

3. Compulsory Reforms Imposed on the Member States

What were the effects of these provisions at the domestic level? The first useful step to answer this question is establishing the amount of changes the Directive *obliged* member states to accomplish. What was the difference between the binding standards of the Directive and the existing policies at the national level? Given the largely sceptical assessment of the Directive after its adoption, it might come as a surprise that our in-depth analysis of the Directive's compulsory reform implications reveals that some sort of *adaptational pressure was created in all 15 member states*. However, the amount of "hard" policy misfit varies widely among different countries.

Four countries did not have any generally-binding legal provisions on parental leave when the Directive was adopted: For *Ireland*, *Luxembourg*, and the *United Kingdom*, the Directive really meant a complete policy innovation in the sense that employees for the first time were given the right to take parental leave. *Belgium* also had no statutory parental-leave scheme covering all employees, but the practical relevance of this considerable legal misfit was softened by the fact that parental leave was already established in the public sector and that additionally, a scheme of career breaks was in operation. Many private-sector employees used this scheme as a substitute for parental leave. It offered all workers in the private sector the opportunity to take time off for three to twelve months while receiving part of their monthly salary and being entitled to return to their job afterwards. However, the right to take such an *interruption de carrière* required the employer's agreement as well as the

replacement of the person taking leave by an unemployed jobseeker.[6] Hence, the Directive still demanded significant qualitative adaptations to the status quo.

The remaining member states had parental leave systems in place. At first sight, these systems were all more generous than required by the Directive. All of these eleven countries provided for longer leave periods than the Directive's three months (see Table 1). At the lower end of the spectrum was Greece with 3.5 months of leave, followed by Denmark, Italy, the Netherlands, and Portugal with six months. The longest full-time leave periods could be found in France and Germany (three years), while employees in Finland and Sweden were allowed to take very long periods of part-time leave (until the child had reached the age of seven or eight years, respectively) in addition to the initial periods of full-time leave which amounted to eight months in Finland and 18 months in Sweden.

Furthermore, eight member states provided some sort of payment during parental leave. The most generous payment schemes were in force in Sweden and Finland. Swedish employees were entitled to 80 per cent of their previous salary, payable by the state, for the first twelve months and to a lower flat-rate benefit for a further six months. In Finland, the first six months of leave were financed by the state at the level of about 70 per cent of the previous salary, while a lower flat-rate benefit was paid until the child was three years old. In Denmark, employees who took parental leave were entitled to state allowance amounting to 60 per cent of unemployment benefit, and in Italy, they received 30 per cent of their previous salary. In Austria, Belgium, Germany, and France, rather low flat-rate benefits were awarded to leave-takers, ranging from about 300 to 500 Euro per month.

6 Originally, only SMEs were excluded from the replacement duty, since one of the main reasons for introducing this scheme in the first place was the employment effect. Meanwhile, the duty to replace persons taking time off under the scheme has been repealed for all undertakings by a reform that came into force on 1 January 2002.

Table 1: Domestic Parental-Leave Schemes Prior to the Directive

Country	Length of leave	Payment	Restrictions on take-up
Austria	24 months full-time, 48 months part-time leave	low flat-rate benefit	primarily available to women; single-income couples excluded
Belgium	12 months full-time (career break scheme)	low flat-rate benefit	consent of employer necessary
Denmark	6 months if taken before child's first birthday, otherwise 3 months	60 per cent of ordinary unemployment benefit	–
Finland	8 months full-time plus part-time leave until child is seven years old	70 per cent of previous salary during first six months and lower flat-rate benefit until child is three years old	–
France	36 months	low flat-rate benefit	–
Germany	36 months	low flat-rate benefit payable for up to two years	single-income couples excluded
Greece	3.5 months	–	employees working in SMEs and single-income couples excluded
Ireland	–	–	–
Italy	6 months	30 per cent of previous salary	primarily available to women
Luxembourg	–	–	–
Netherlands	6 months (only possible on part-time basis)	–	part-time workers with less than 20 hours weekly working time excluded
Portugal	6 months (prolongation of up to 24 months possible)	–	single-income couples excluded
Spain	12 months (prolongation of up to 36 months possible)	–	–
Sweden	18 months full-time leave plus part-time leave until child is 8 years old	80 per cent of previous salary during first year; lower flat-rate benefit for a further six months	–
United Kingdom	–	–	–

What is overlooked by an exclusive perspective on the length of, and payment during, parental leave is that in a considerable number of countries, this leave was not an *individual right* of male and female workers alike. In these countries, the Directive hence demanded the introduction of qualitative improvements to the existing schemes. In *Austria* and *Italy*, the parental leave regulations were mainly focused on women, whereas fathers were entitled to take the leave only if the mother refrained from using her right. In contrast, the Directive required the entitlement to parental leave to apply equally to women and men. Less significantly, the *Austrian*, *German*, *Greek*, *and Portuguese* systems excluded single-income families, that is, the typical male breadwinner could not take parental leave if his partner was not employed but e.g. worked at home as a housewife, or studied. Meanwhile, almost all of these shortcomings have been removed as a reaction to the Directive.[7]

Moreover, two countries completely debarred further important categories of the workforce from being covered by the scheme. In *Greece*, all workers in small and medium-sized enterprises with less than 50 employees had no entitlement to parental leave. As a reaction to the Directive, this exclusion was repealed. In *the Netherlands*, employees could not take full-time leave to take care of a child, but were only entitled to reduce their weekly working time to 20 hours. While it would not have been contrary to the Directive to provide for part-time leave only, the obvious downside of the pre-existing Dutch parental leave scheme was that employees whose weekly working time was below 20 hours were not entitled to parental leave at all (Interview NL4: 60–76). Hence, the Dutch preoccupation with part-time leave led to the paradoxical situation that many part-timers were excluded from the right to parental leave. However, when the Directive was adopted, a national review process of the existing legislation was already under way, and the reform proposals issued by the government as a result of that review already provided for an extension of the parental leave scheme to all employees (Clauwaert/Harger 2000: 68). As a result of this parallel domestic reform process, the incorporation of the Directive into domestic law did not pose any major problems.

Moreover, the majority of member states needed to change their legislation in regard to force majeure leave. While Denmark, Ireland, Luxembourg, and the UK did not have generally binding legal rules on time off from work due to urgent family reasons,[8] Finland, France, Greece, Spain, and Sweden had to adapt their existing regulations, mostly by including emergencies relating to family members other than children in the scope of the leave. Hence, certain improvements were also brought about in this area.

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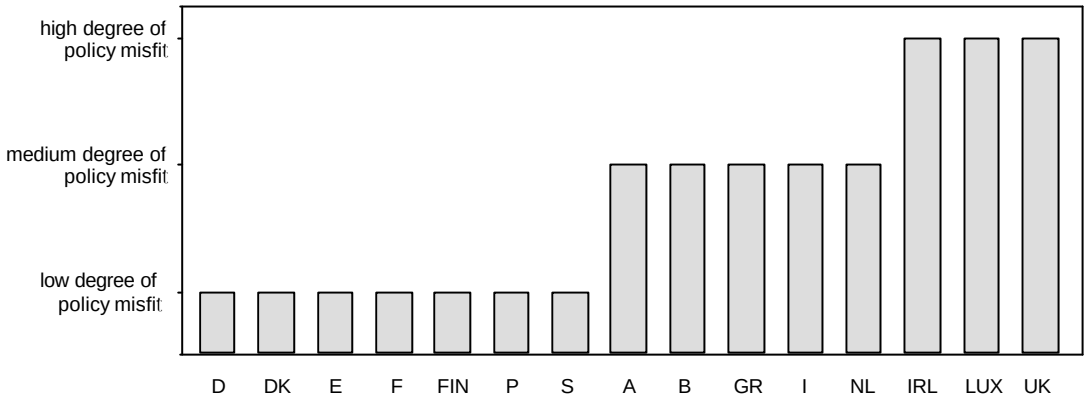
7 At the time of writing, the Greek legislation still excludes single-income couples, while the Austrian scheme still includes a small advantage for the mother.

8 In Denmark, force majeure leave was granted to many employees on the basis of collective agreements, which reduces the policy impact of this lack of generally binding legislation considerably. However, adaptation to the Directive met with specific difficulties since the adoption of generally binding legislation in this area clashed with the Danish tradition of autonomous social partnership. As the focus of this paper lies on the policy impact of the Directive, we will not discuss this very interesting effect here. For more details, see Falkner/Leiber (2004).

In sum, there is not one country whose rules and regulations were already completely in line with the Directive. Seven member states had to cope with low degrees of policy misfit, five with medium-scale policy misfit, and three countries were confronted with high degrees of policy misfit (see figure 1).

Figure 1: Compulsory Policy Misfit in 15 Member States



4. Voluntary Fortification of the Directive's Thrust

Besides these already considerable domestic reforms caused by the compulsory standards of the Parental Leave Directive, we have observed a number of cases where domestic governments even went significantly beyond the European minimum requirements. On the one hand, this concerned voluntary reforms that exceeded the binding European standards (surpassing adaptation). On the other hand, quite a number of member states reflected some of the soft-law provisions laid down in the Directive.

With regard to soft-law effects, *Belgium*, *Ireland*, *Luxembourg*, *Portugal* and the *UK* provided for the entitlement to parental leave to be non-transferable. It seems that this recommendation was only implemented by countries that introduced completely new schemes. This was even true for Portugal. Although an entitlement to up to two years "special leave" had already existed before, the government introduced a new parental leave scheme in addition to the existing system. Interestingly, the new scheme was made non-transferable, whereas the "special leave" system had been transferable. Apparently, this was done because Portuguese officials were convinced that this provision of the Directive was compulsory rather than optional (Interview P1: 1895–1902).

The recommendation that taking leave should be possible until the child's eight birthday was reflected in the legislation of four countries. *Austria* and *Germany* retained their general age limits but provided for the possibility to take part of the leave until the child is seven (Austria) or eight years of age (Germany). In *Italy*, the age limit was raised from three to nine. In the *Netherlands*, the government originally wanted to raise the age threshold from four to six, but the trade unions pushed to let parents take the leave until the child has reached the age of eight.

With regard to flexible forms of take-up, *Germany* adopted a rather far-reaching system that gives parents working in companies with more than 30 employees the legal right to work part-time during parental leave. *Portugal* went even further and guaranteed all employees a legal right to work part-time during parental leave (Interview P9: 792–796). *Belgium* endowed mothers and fathers working in companies with more than ten employees with a legal right to part-time leave. In addition, leave can also be taken in a piecemeal way and on the basis of a time-credit system provided that the employer agrees (Clauwaert/Harger 2000: 21). Finally, the already-mentioned possibility introduced in *Austria* and *Germany* to postpone part of the leave implies that the leave also can be taken in a piecemeal way. Furthermore, both countries created the possibility for mothers and fathers to take parts of the whole leave period alternately.

The provision that men should be encouraged to take an equal share of their family responsibilities also had a substantial impact in some countries. In *Germany*, the measures relating to simultaneous leave and part-time working during parental leave were explicitly meant to make parental leave more attractive for men. In addition, the introduction of the revised parental leave act was accompanied by a public campaign sponsored by the Department of Family Affairs, which aimed to encourage men to become more involved in childcare. A similar campaign was also carried out in *Spain* but was not supplemented with specific legislative measures. In *Portugal*, the introduction of a right to part-time leave aimed to make parental leave for men more attractive. On top of that, the government created a specific incentive for fathers to avail themselves of their right to parental leave: while leave normally is unpaid, the first 15 days of the leave taken by a male employee are paid by the state. Ministry officials considered this measure to be a direct reaction to the Directive (Interview P1: 1752–1784, 2164–2149). Finally, *Italy* provided fathers with the right to an extra month of leave if they go on parental leave for at least three months.

Besides these soft-law effects, we have also found a number of cases where national governments were induced to introduce reforms surpassing the Directive's minimum standards without reflecting any particular soft-law provisions. The most significant example of this pattern was *Luxembourg*, where the newly-created statutory scheme provides for six instead of three months parental leave which is, moreover, generously paid by the state and even pertains to persons usually not considered employees, i.e. civil servants and the self-employed. *Belgium* also introduced paid parental leave financed by the state, although this

special paid leave may be refused by employers in small establishments with less than ten employees. *Italy* voluntarily extended the length of the leave from six to ten months and granted self-employed women tax relief if they arranged to be replaced by another person. More minor instances of this kind of over-implementation could be observed in *Austria* (notice periods were reduced and employees were given the right to be informed about important events in their company during parental leave), *Germany* (possibility for parents to take parental leave simultaneously), *Ireland* (force majeure leave has to be paid by the employer), and *Portugal* (the right to take "parental" leave was partly extended to grandparents, who are now entitled to 30 days special grandparents leave).

In sum, we could observe a surprisingly large number of voluntary reforms fortifying the thrust of the Directive (see Table 2). Significant instances of this pattern were to be found in five member states (Germany, Portugal, Belgium, Italy, and Luxembourg). A further four countries went beyond the compulsory minimum level of the Directive in some minor aspects (Spain, Austria, the Netherlands, and Ireland).

Table 2: Compulsory and Voluntary Reforms Caused by the Parental Leave Directive

		Degree of compulsory policy changes required by the Directive		
		low	**medium**	**high**
Voluntary fortification of the Directive's thrust	**none**	Denmark, France, Finland, Sweden	Greece	
	minor	Spain	Austria, Netherlands	Ireland, United Kingdom
	significant	Germany, Portugal	Belgium, Italy	Luxembourg

5. An Overview of the Total Policy Effects

In order to categorise the observed domestic policy effects of the Parental Leave Directive, we use a fourfold[9] typology, modifying a number of categorisations suggested in the literature (Héritier 2001a: 54; Radaelli 2001: 119–120; Börzel 2004). The first category is *no or only negligible effect*, which means that there was no impact at all or that the effect was only very small. Four countries may be subsumed under this heading: Denmark, Finland, France, and Sweden (see Table 3). All of these countries only had to adapt parts of their existing policies on leave for urgent family reasons and did not enact any further voluntary reforms in the context of implementing the Directive. The lack of reactions to the soft-law provisions in these countries may be explained by the fact that especially in Finland and Sweden, many of the recommendations had already been fulfilled (e.g. the possibility to take part-time leave).

Table 3: Overall Policy Effects of the Parental Leave Directive

No or Only Negligible Effect	Reinforced Policy	Patchwork Addition	Paradigmatic Change
Denmark, France, Finland, Sweden	Spain	Austria Germany, Greece, Italy, Netherlands, Portugal	Belgium, Ireland, Luxembourg, United Kingdom

The second category is *reinforced policy*, denoting cases where the existing policies were neither transformed fundamentally nor supplemented with qualitatively new elements. Instead, the old policy remained in place and similar elements were added. This applies only to Spain, where the Directive brought about a more explicit protection of leave-takers from dismissal as well as a small (voluntary) adaptation of the rules on force majeure leave.

Next is *patchwork addition*. Here, the fundamentals of the existing system remained unchanged, but qualitatively new elements were added. This pattern could be observed in Austria, Germany, Greece, Italy, the Netherlands, and Portugal. In Austria, Greece, and the Netherlands, this effect was brought about by the compulsory requirements of the Directive, that is, by the need to extend the existing scheme to all part-time workers (Netherlands), to workers in SMEs and to single-income families (Greece), and to fathers as well as single-

9 In principle, the typology includes five categories. But the fifth category, weakened policy, did not play a role in the present cases. Theoretically, however, it is well possible that a European policy undermines the existing domestic system without completely replacing it and without adding qualitatively new elements.

income families (Austria). In the remaining three countries, a mixture of compulsory and voluntary reforms accounted for the outcome. Germany was forced to extend the right to take parental leave to single-income couples, but also took up a number of the non-binding recommendations of the Directive. In this way, the German government introduced qualitatively new policy elements, in particular the legal right to work part-time during parental leave. In Portugal, the amount of compulsory adaptation requirements was also rather low, but like in Germany, the government reacted in a rather extensive way to the soft-law provisions. The newly created parental leave scheme was made non-transferable, employees were offered a legal right to part-time work during parental leave, and the government created specific incentive measures for men to take parental leave. In Italy, considerable compulsory reforms (the need to entitle fathers to parental leave on an equal footing) were combined with significant voluntary ones (incentive measures for men, longer leave period, and tax relief for self-employed).

The fourth category is *paradigmatic change*, including both the complete reversal of an existing policy and the creation of an entirely new policy from scratch. In this group, we have Belgium, Ireland, Luxembourg, and the UK. Ireland and the UK were forced to create completely new parental leave systems, but did not enact any significant voluntary reforms. Belgium already had to qualitatively transform its existing system of career breaks. But the government supplemented this step by considerable voluntary reforms (higher payment during parental leave, right to work part-time), thereby again creating something qualitatively new. Luxembourg, finally, complemented the creation of a completely new system of parental leave with significant voluntary steps, especially by offering six instead of three months leave and by providing for generous payment during the leave.

In order to obtain a comprehensive picture of the Directive's impact, we should not only look at the enacted legal reforms, but also at the *practical outcomes* in the member states. Considering *actual take-up rates* of parental leave, the limits of the Directive become evident. On the basis of the few data available, apparently the highest take-up rates are to be found in countries where parental leave is paid, such as in Sweden, Finland, Germany, or Austria (Bruning/Plantenga 1999: 200–203). In countries offering unpaid leave only, take-up rates are much lower (EIRR 262: 15). This is particularly severe in countries like Greece and Portugal where average wages are very low so that employees cannot afford to go on leave without any supplementary financial aid. Since the Directive did not require the provision of payment during parental leave, no decisive improvements to this situation have been achieved.

A look at the countries in which parental leave was newly introduced confirms this impression. In Ireland, where a rather minimalist scheme without any payment for parental leave is in operation, take-up rates are rather low. Research commissioned by the government revealed that only about 20 per cent of eligible employees actually made use of their entitlement in 2001 (DJELR 2002: 119). No data is available so far for the UK but it is

very likely that they would point in a similar direction. In contrast, much higher take-up rates have been reported from Luxembourg, where the government chose to considerably over-implement the Directive by providing generous state benefits for workers on parental leave. Hence, positive outcomes in terms of take-up rates may only be observed where national governments considerably improved on the minimum standards of the Directive.

If we turn our attention to *gender disparities among leave-takers*, women still make up the vast majority of leave-takers in almost all countries. The likeliness of fathers to take parental leave appears to be lowest if entitlements to parental leave are transferable between the parents and if payment is low or non-existent. In Germany or Austria, for example, only between one and two per cent of leave-takers are men (Bruning/Plantenga 1999: 200; Vascovics/Rost 1999). Where parental leave is generously paid, ideally on an earnings-related basis, take-up rates of fathers are higher. The most striking example in this respect is Sweden, where parents receive 80 per cent of their previous earnings during the largest part of their leave. Here, about 50 per cent of all fathers take some period of parental leave, even though women still take much longer periods of leave (Bruning/Plantenga 1999: 200).

Even though there is no indication that the Directive led to a fundamental overhaul of this situation, it did bring about some small improvements. First of all, the Directive considerably strengthened the legal rights of men to take parental leave. In countries where men had previously been legally disadvantaged in their access to the leave schemes, the Directive has removed one of the most obvious stumbling blocks for increased male take-up rates.

Moreover, the Directive has stimulated reforms in some countries, which might turn out to have positive effects on the share of male workers in childcare. Provisions on the non-transferability of parental leave entitlements and on part-time or flexible forms of take-up, albeit only non-binding in character, did have an effect in some countries. Belgium, Ireland, Luxembourg, and the UK made entitlement to their new leave schemes non-transferable, while Portugal established a second non-transferable scheme along the existing rules. Indeed, the share of men who take parental leave is comparatively high in some of these countries. Available data reveals that about 15 per cent of all leave-takers are men in Belgium (Clauwaert/Harger 2000: 24). In Ireland, this ratio is even 16 per cent (DJELR 2002: 120). Finally, a number of other voluntary reforms likely to have a positive effect on male take-up rates, such as the considerable facilitation of flexible leave forms, were implemented in some countries.

However, it is still too soon to assess the practical effects of these steps. In this context, we should not forget that the low rate of fathers on parental leave is to a large part the result of deeply entrenched role definitions in society which, insofar as they are malleable by political intervention at all, will only change through a gradual process whose extent will have to be measured in decades rather than in months or years.

6. Conclusions

In this paper, we have looked at the impact of the first EU-level social partner agreement, on parental leave and leave for urgent family reasons. Contrary to the rather sceptical initial assessments, our in-depth analysis of the Parental Leave Directive's implementation in all 15 member states revealed surprisingly far-reaching effects. By way of both compulsory adaptations and voluntary reforms, the Directive induced significant policy reforms in the majority of member states and thus considerably facilitated the reconciliation of work and family life for many working parents.

Given the fact that the Directive did not force member states to introduce paid parental leave and that many useful provisions were of a non-binding nature, the most far-reaching effects in terms of actual take-up rates and in terms of the share of men who take parental leave were produced in those countries where the required adaptations were supplemented by voluntary ones triggered by the Directive.

These voluntary effects in particular have hitherto received little attention. Many Europeanisation scholars have been preoccupied with "misfits" or "mismatches" between European demands and domestic structures and policies. In this field of literature, therefore, the "soft" impact of European recommendations has so far played only a minor role.[10] It was only recently that the invention and proliferation of the "open method of co-ordination" has increased the interest in non-compulsory reforms triggered by the EU (Héritier 2001c; Hodson/Maher 2001; de la Porte/Pochet 2002; Mosher/Trubek 2003). Our results suggest that the possibility of such voluntary adaptations should be taken into account by Europeanisation researchers much more systematically than has so far been the case.

But how can we explain these voluntary reforms? As is well known, their realisation is not backed by the binding force of European law as is the case with "hard" policy standards. Theoretically, two explanations seem possible. Scholars following constructivist or sociological institutionalist arguments would highlight policy learning and the diffusion of ideas as the causal mechanism. More interest-based approaches would point to the policy preferences of domestic actors, e.g. to party political interests of governments, as the factor that accounts for such voluntary reforms. In this view, soft-law elements would be taken up if they fit in with the policy preferences of domestic governments. Our empirical results seem to support both arguments to some extent.

The role of *party politics* is certainly important in explaining the observed cases of voluntary adaptation. Among the five countries in which significant forms of surpassing implementation

10 One major exception is Christoph Knill's and Dirk Lehmkuhl's (1999) concept of "framing integration" which comes close to what we discuss here as the effect of soft law.

occurred, three were governed by centre-left governments when the Directive was implemented. In Germany, a coalition between the social democrats and the green party was in power, Portugal was governed by the socialist party, and the Italian reform was enacted by a coalition government consisting of seven centre-left parties. This result indeed suggests that party politics matters here. As has been hypothesised by Armingeon and Bonoli, the reconciliation of work and family life as one of the main "new social risk" policies seems to be supported more by centre-left parties than by Christian democratic, conservative, or liberal parties (Armingeon/Bonoli 2003).

This was particularly obvious in the German case, where the previous Christian democratic/liberal government was already opposed to the 1983 draft Directive. After a less far-reaching version of the Directive had been adopted in 1996, the same coalition government refused to fulfil the compulsory reform requirements (including single-income couples into the scope of the parental leave scheme) since the equal treatment impetus of the Directive ran counter to the conservative family policy of the Christian democratic coalition partner (Interview D9: 143–150). Only the "Red-Green" government, which had assumed power in 1998, complied with the Directive and, additionally, took on board many of the soft-law provisions (see Treib 2003 for more details).

However, the picture becomes more complicated if we look at the remaining two countries. The significant voluntary reforms to be found in Belgium and Luxembourg were created by grand coalitions between Christian democratic and social democratic parties. Both of these coalitions, moreover, were led by the larger Christian democratic coalition partners and in both countries, the responsible ministry was headed by a Christian democrat. This finding suggests that not all Christian democratic or conservative parties are necessarily opposed to policies covering the reconciliation of work and family life.[11]

At this point, *policy learning* comes into play. Especially in the case of Luxembourg, part of the swift adaptation as well as of the wide-ranging over-implementation seems to be due to the government's realisation of being a European laggard with regard to parental leave and thus wanting to catch up with the others. The other part of the Luxembourg story, however, again fits better to an interest-based model. In Luxembourg, parental leave was seen as an opportunity to fight unemployment. It was hoped that the need for temporary replacements would help unemployed persons back into the labour market. Seen from this labour-market perspective, therefore, it was important to create a scheme with generous payment that would be used by many working parents so that enough replacements would be needed.

11 This is also corroborated by another case. In Ireland, all parties supported the introduction of parental leave, including the two large conservative parties Fianna Fáil and Fine Gael. The Directive therefore was implemented rather swiftly by a government consisting of Fianna Fáil and the liberal Progressive Democrats.

Since it is very difficult in methodological terms to clearly discern such learning processes, however, we do not want to rule out the possibility that some of the other instances of voluntary adaptation were actually caused by policy learning rather than by party politics. At any rate, our analysis suggests that European soft law may have an impact at the domestic level and that the effect of European policies may be larger than suggested by looking at the compulsory standards of Directives only.

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Authors: Oliver Treib, Gerda Falkner

Title: The First EU Social Partner Agreement in Practice: Parental Leave in the 15 Member States

Reihe Politikwissenschaft / Political Science Series 96

Editor: Oliver Treib
Associate Editor: Gertrud Hafner

ISSN: 1605-8003

Stumpergasse 56, A-1060 Vienna • ☎ +43 1 59991-0 • Fax +43 1 59991-555 • http://www.ihs.ac.at

ISSN: 1605-8003